

MONTANA LEGISLATIVE HISTORY

Chapter 235 19 95Bill H _____ S 233Original bill & history X cH. Committee on BUSINESS LABOR
JUDICIARYHearing Date(s) 3/8 X c

⊕ EXEC ACTION _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on JUDICIARYHearing Date(s) 2/10 X cEXEC ACTION 2/13 X c

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

1/24	FIRST READING		
1/24	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/01	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/14	2ND READING PASSED	31	18
2/15	3RD READING PASSED	32	18
TRANSMITTED TO HOUSE			
2/20	FIRST READING		
2/20	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/08	HEARING		
3/23	TABLED IN COMMITTEE		
3/25	MOTION FAILED TO TAKE FROM COMMITTEE		
	AND PLACE ON 2ND READING	27	47
4/04	MOTION FAILED TO TAKE FROM COMMITTEE		
	AND PLACE ON 2ND READING (THIS MOTION		
	REQUIRES 3/5 VOTE TO PASS)	47	46
	DIED IN COMMITTEE		

* SB 233

INTRODUCED BY HARP

REQUIRE RETURN OF ATTORNEY FEES AND COSTS PAID BY AN INSURER
TO AN ATTORNEY FOR A WORKERS' COMPENSATION CLAIMANT
CONVICTED OF OBTAINING BENEFITS THROUGH FRAUD OR
DECEPTION

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO JUDICIARY		
1/25	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
1/31	FISCAL NOTE PRINTED		
2/10	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	50	0
2/18	3RD READING PASSED	50	0
TRANSMITTED TO HOUSE			
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/08	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	91	1
3/14	3RD READING CONCURRED	99	1
RETURNED TO SENATE			
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 235		
	EFFECTIVE DATE: 07/01/95		

SB 234

INTRODUCED BY GROSFIELD

IMPLEMENT RECOMMENDATION OF GOVERNOR'S TASK FORCE TO
RENEW STATE GOVERNMENT BY GENERALLY REVISING THE
ENVIRONMENTAL AND NATURAL RESOURCE FUNCTIONS OF STATE
GOVERNMENT

BY REQUEST OF THE GOVERNOR

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO NATURAL RESOURCES		
1/25	FISCAL NOTE REQUESTED		

1/31	FISCAL NOTE RECEIVED		
1/31	FISCAL NOTE PRINTED		
2/03	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	44	6
2/22	3RD READING PASSED	44	6
TRANSMITTED TO HOUSE			
2/27	FIRST READING		
2/27	REFERRED TO STATE ADMINISTRATION		
3/09	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED AS AMENDED	68	30
3/29	3RD READING CONCURRED	75	25
RETURNED TO SENATE WITH AMENDMENTS			
4/04	2ND READING AMENDMENTS CONCURRED	49	0
4/05	3RD READING AMENDMENTS CONCURRED	44	6
4/11	SIGNED BY PRESIDENT		
4/11	SIGNED BY SPEAKER		
4/11	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 418		
	EFFECTIVE DATE: 07/01/95		

SB 235

INTRODUCED BY MILLER, ET AL.

CLARIFY THAT MOBILE HOMES HELD BY A DEALER OR DISTRIBUTOR AS
PART OF THE STOCK IN TRADE ARE BUSINESS INVENTORIES FOR
PROPERTY TAX PURPOSES

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO TAXATION		
1/26	FISCAL NOTE REQUESTED		
1/26	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
2/07	HEARING		
2/07	COMMITTEE REPORT—BILL PASSED		
2/08	2ND READING PASSED	49	0
2/09	3RD READING PASSED	47	2
TRANSMITTED TO HOUSE			
2/10	FIRST READING		
2/15	REFERRED TO TAXATION		
3/03	HEARING		
3/03	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	95	2
3/06	3RD READING CONCURRED	96	3
RETURNED TO SENATE			
3/07	SIGNED BY PRESIDENT		
3/07	SIGNED BY SPEAKER		
3/08	TRANSMITTED TO GOVERNOR		
3/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 99		
	EFFECTIVE DATE: 03/09/95		

SENATE BILL NO. 233

INTRODUCED BY

HARP

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING ATTORNEY FEES FOR A WORKERS' COMPENSATION CLAIM; LIMITING ATTORNEY FEES; REQUIRING THE RETURN OF ATTORNEY FEES AND COSTS PAID BY AN INSURER TO AN ATTORNEY FOR A WORKERS' COMPENSATION CLAIMANT CONVICTED OF OBTAINING BENEFITS THROUGH FRAUD OR DECEPTION; ALLOWING BENEFITS TO BE MODIFIED WHEN THEY WERE OBTAINED BY FRAUD OR DECEPTION; AMENDING SECTIONS 39-71-613 AND 39-71-2909, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-613, MCA, is amended to read:

"39-71-613. Regulation of ~~attorneys'~~ attorney fees -- forfeiture of fee for noncompliance -- return of fee when claimant received benefits through fraud or deception. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) If a claim has been accepted as compensable by an insurer but a controversy exists relating to the amount of compensation due, the attorney fees may not be more than 15% of any additional benefits obtained, through the attorney's efforts, in excess of the amount paid or offered by the insurer. The attorney fees may not exceed \$7,500 per claim. An attorney may contract with the claimant to receive less than the maximum amount that the attorney is entitled to under this subsection.

(3) On a claim for which initial compensability has been denied, the attorney fees may not exceed 15% of any benefits obtained, through the attorney's efforts, up to the date on which the claim is accepted by the insurer or ordered compensable by the workers' compensation court or the state supreme court.

(4) The following benefits may not be considered in calculating attorney fees:

(a) medical and hospital benefits that are received by the claimant, unless the insurer has denied all liability or has denied liability for certain medical and hospital costs and the claimant's attorney is successful in obtaining those benefits for the claimant;

1 (b) benefits that are received by the claimant when the attorney has only assisted in filling out
2 initial forms;

3 (c) benefits that are initiated or offered by the insurer when supported by documentation in the
4 claimant's file and that are not the subject of a dispute between the insurer and the claimant;and

5 (d) any other benefits that are not obtained by the actual, reasonable, and necessary efforts of the
6 attorney.

7 (5) The fee in subsection (2) does not preclude the use of other fee arrangements, including the
8 use of a reasonable hourly rate not exceeding \$75 an hour. The total fee may not exceed the limits
9 established in subsection (2). When an alternative fee arrangement is used, the contract of employment
10 must specify the terms of the fee arrangement. The fee arrangement is subject to approval by the
11 department. An attorney may reduce the fee from the fee originally established in the fee arrangement
12 without department approval.

13 (6) The amount of attorney fees must be determined by the approved fee arrangement and must
14 be paid out of workers' compensation funds received by the claimant.

15 (7) In the event that a dispute arises between a claimant and an attorney relative to attorney fees,
16 upon the request of either the claimant or attorney or upon notice by any person of a violation of this
17 section, the department shall review the matter and issue an order resolving the dispute pursuant to
18 procedures set forth in the department's administrative rules. A fee arrangement must clearly identify the
19 rights granted by this subsection.

20 ~~(2)(8)~~ (8) The department may regulate the amount of the ~~attorney's fee~~ attorney fees in any workers'
21 compensation case. In regulating the amount of the fee, the department shall consider:

22 (a) the benefits the claimant gained due to the efforts of the attorney;

23 (b) the time the attorney was required to spend on the case;

24 (c) the complexity of the case; and

25 (d) any other relevant matter the department may consider appropriate.

26 ~~(3)(9)~~ (9) ~~If an~~ An attorney who violates a provision of this section, a rule adopted under this section,
27 or an order fixing an ~~attorney's fee~~ attorney fees under this section, ~~he shall forfeit~~ forfeits the right to any
28 fee ~~which he may have~~ that the attorney collected or ~~been~~ was entitled to collect.

29 (10) If, after an attorney receives attorney fees and costs assessed against an insurer, the claimant
30 is convicted of having obtained benefits through fraud or deception, the attorney fees and costs awarded

1 for obtaining the benefits must be returned to the insurer by the attorney."

2
3 **Section 2.** Section 39-71-2909, MCA, is amended to read:

4 **"39-71-2909. Authority to review, diminish, or increase awards.** The judge may, upon the petition
5 of a claimant or an insurer that the disability of the claimant has changed or that the claimant received
6 benefits through fraud or deception, review, diminish, or increase, in accordance with the law on benefits
7 as set forth in chapter 71 of this title, any benefits previously awarded by the judge. An insurer's petition
8 alleging that the claimant received benefits through fraud or deception must be filed within 2 years after
9 the insurer discovers the fraud or deception."

10
11 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 1995.

12 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0233, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

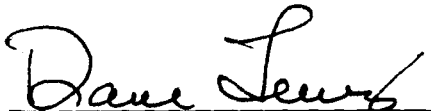
A bill that regulates attorney fees for a workers' compensation claim; limits attorney fees; requires the return of attorney fees and cost paid by an insurer to an attorney for a workers' compensation claimant convicted of obtaining benefits through fraud or deception; allowing benefits to be modified when they were obtained by fraud or deception.

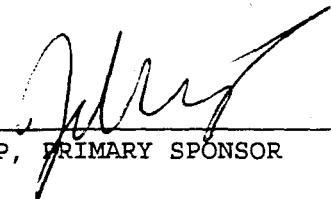
ASSUMPTIONS:

1. Changes in attorney fees would redistribute benefit payments between the claimant and their attorney and would not change benefit payments paid by an insurer following resolution of a disputed claim. Attorney fees may only be obtained by claimant's attorney in a workers' compensation award. Attorney fees may only be obtained from an insurer if an insurer's conduct is unreasonable. Attorney fees must be paid out of the workers' compensation funds received by the claimant.
2. Attorneys must return, to the insurer, fees and cost awarded if the claimant is convicted of having obtained benefits through fraud or deception.

FISCAL IMPACT:

SB233 would not change State Fund expenditures for benefits in disputed cases. Miscellaneous revenues may increase by minor amounts to the extent that attorney fees are returned to the State Fund when a claimant is convicted of having obtained benefits through fraud or deception.

 1-30-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


JOHN HARP, PRIMARY SPONSOR DATE

Fiscal Note for SB0233, as introduced

SB 233

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **BRUCE D. CRIPPEN, CHAIR**, on February 10, 1995,
at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 292, SB 241, SB 249, SB 233
Executive Action: None.

{Tape: 1; Side: A; Approx. Counter: 00}

HEARING ON SB 292

Opening Statement by Sponsor:

SENATOR BOB BROWN, Senate District 40, including Whitefish and Western Flathead County, appeared to open the hearing as the primary sponsor of SB 292. He read the title, "the womens' right to know act, providing for publication and dissemination of information concerning abortion, clarifying informed consent, providing civil remedies for failure to obtain informed consent, and amending certain sections of the law."

He said he would have to think about the excise tax. Frankly, he said, the gun owners of Montana did not create this problem. He thought perhaps that the gun owners of Montana would not want to solve it. There were federal monies available. The federal government imposed the law upon us, off the cuff, he said. The federal government could jolly well pay for it.

SENATOR DOHERTY asked if anyone between now and 1998 who wanted the mag strip could request it? In order to reduce the fiscal impact, maybe those who wanted it could pay to add it to their license.

Mr. Marbut said an argument could certainly be made, but those people who are requesting the marking on their license are actually going to save the state money. This is because they are probably multiple gun buyers and the state could research the records once instead of multiple times.

Closing by Sponsor:

SENATOR BENEDICT told the committee there are always questions on a brand new idea. The adoption of the bill would be a good step in trying to halt the erosion of people's Constitutional rights to keep and bear arms. The cities and towns in Montana are not the same as Los Angeles or California. We need to develop a policy in Montana that really reflects our differences. This bill will not hinder efforts to keep handguns out of the control of criminals. It will put into place a user-friendly, efficient way of dealing with background checks and allow the "good guys," (law abiding Montanans) to be treated with some dignity and respect when they exercise their right to purchase a handgun.

HEARING ON SB 233

Opening Statement by Sponsor:

SENATOR JOHN HARP, Senate District 42, Kalispell, opened the hearing on SB 233, a bill that has been before the committee the past two sessions. It is also very similar to an attorney bill passed two years ago. That bill related to the defense side, too, he said, but this one is strictly dealing with the claimant side. He said there would be people opposing the bill because in dealing with attorney fees, it would infringe upon their livelihood. He said the theme behind the bill would deal with two parts, one dealing with attorney fees and the other question would be in response to a court decision of Chapman vs. Montana. In that case, it was determined that even after an individual has been found guilty of fraudulent claim, that the attorney still has the ability to retain those dollars from the insurance company or the state fund. The Supreme Court upheld that in their findings on existing statutes. He said he did not believe that the people of Montana ever intended for them to keep the fees in a fraud case. The attorney in that case was able to

retain some \$17,000. Rather than give the Workers' Comp judge the jurisdiction to follow the decision when fraud is detected within 60 days of that decision, this bill adds an additional period of two years before the time the insurer can discover the fraud or deception. Obviously, 60 days is not long enough.

SENATOR HARP said many changes have been made to Workers' Compensation in the last two years. He said a better system for the program and third parties, be it insurers or providers, is needed to get back to the original intent of Workers' Compensation which is a contact between employers and employees. He thought the guidance of attorneys dealing with these cases would still be there. They wanted to ensure that an attorney should be involved if a claimant recognizes that he is not receiving his compensable injury dollars, and to make sure his benefits are not being treated unfairly. He said that if an attorney provided the additional effort that he should be compensated, up to \$7,500 or a fee of \$75.00 per hour. The fee amount may be a little low and he said he was open to suggestions on that, although he said it was consistent with the Department of Labor, Workers' Compensation attorney fee regulation. He said he would be more comfortable putting it into the statutes and stated that it was good public policy. The bill would reduce attorney fees from 20 per cent to 15 per cent and his intention was to see that the injured worker gets the maximum amount of dollars in those cases. The attorneys will say that by reducing those fees, they won't be able to get the quality representation that they need. In 39-71-614 of the codes, the Workers' Comp judge can assess costs, and the bill would not preclude that. The bill would not supersede that ruling and thus recognize flexibility. He said they would hear the argument that if an attorney was involved, the injured worker would receive more benefits. He said that the study that provided that scenario was done before the managed care provisions passed two years ago, and he predicted that there will not be a great distinction between having attorney involvement or not.

Proponents' Testimony:

Carl Swanson, President of the State Fund, appeared to give testimony on the Chapman case which is a portion of the bill. It truly is a rare occurrence, but when it happens, is truly profound. The State Fund had a claimant that was awarded permanent, total disability benefits in the Workers' Comp Court and his attorney was also awarded attorney fees. After an investigation revealed that fraud was present, the State Fund immediately proceeded to district court for a criminal conviction. They also requested the Workers' Comp judge to vacate the earlier decision granting benefits to Donald Chapman and fees to his attorney. The judge ordered Chapman and his attorney to reimburse the State Fund, but the decision was later overturned by the Supreme Court. Consequently, the decision allowed the attorney to keep approximately \$17,000. It also stated that the Workers' Comp Court did not have the authority to

set aside its prior judgement unless it was done within 60 days of the judgement. The case essentially reduced the strength of the Workers' Comp Court to exercise decision-making powers and narrowed the window for fraud to 60 days. This defeats the ability to pursue fraud investigation beyond a short time. They support the Chapman provision in SB 233 because the issues need to be addressed administratively.

Oliver Goe, representing the Montana Municipal Insurance Authority and also the Montana School Groups Authority, self-insurers composed of cities and towns, supported SB 233 on one issue: fraud. Section 2 of the bill allows the Workers' Comp Court the jurisdiction to address fraud-related issues. They strongly supported adoption of the section.

Opponents' Testimony:

Russell Hill, representing the Montana Trial Lawyers Association, (MTLA), submitted written testimony. (EXHIBIT 39) He said that the proponents addressed the Chapman section and not the fees provision. He was doing just the opposite, MTLA opposes the fees provision in SB 233 and has no position on the Chapman provision. He also included in his hand-out a proposed amendment and a clipping.

Helen Christensen, representing the Montana AFL-CIO, read prepared testimony from Donald R. Judge. She urged opposition to SB 233. (EXHIBIT 40)

Gary Todd, representing himself, said he was an injured worker. He was hurt in 1989 and finally retained counsel in March of 1991. The claim was handled by private insurance and he was offered a settlement of \$8,000. Four days after he retained counsel, the offer was \$28,000. In over five years, he said, they had never disputed the injury, and they had not settled. He listed several of the hearings related to the case, but the insurance company refuses to settle or acknowledge his claim.

Don Sullivan, representing himself, told the committee he opposed SB 233. He suffered a disabling injury in 1986 and went by the Workers' Comp rules and drew Social Security, reducing the Workers' Comp payments. He finally consulted an attorney, who adjusted the Social Security, and doubled the settlement.

Joseph Nyland, representing himself, opposed SB 233. He said the bill would affect his ability to acquire competent counsel when a problem arises. He was injured in 1994 and called Workers' Comp the next day. He was told by three different people that his was a compensable claim and was given a file number. He was contacted a week later and told it was not a compensable claim. He immediately contacted an attorney and they filed a grievance. They were given a November mediation conference, to which Workers' Comp had promised to abide by. It was proclaimed a compensable claim, but then Workers' Comp would not honor it. He

had been without medical coverage, medical coverage, financial coverage since September of 1994.

Mary Kay Stearn, Plaintiffs' attorney, Butte, representing herself and two of the injured workers appearing in the hearing, said there had been a dramatic decrease in benefits for injured workers in the last 10 years. There had also been a significant decrease in attorney's fees available for their representatives. Ten years ago the fees were 33 per cent, it moved to 25 per cent, and now it was at 20 per cent. This bill would provide for 15 per cent. There comes a point at which a person running a business can no longer take cases. This bill would eliminate a lot of competent counsel for injured workers. She said it was a bad bill.

Norm Grosfield, attorney, Helena, represented himself and corrected the sponsor, saying it was the FOURTH time he's been here. He said he represents injured workers. He said the average cost to an insurance carrier of taking a case all the way to the Supreme Court could be up to \$20,000 to \$30,000. The average good defense counsel charges in excess of \$100 an hour. He said the overhead in an attorney's office is probably about \$65-75 an hour. He encouraged the committee to find the first section of the bill to not be fair and proper. Attorney fees are currently regulated by the State Department of Labor through statutory law created in 1975.

Ben Everett, attorney, representing himself, presented a copy of the attorney retainer agreement provided by the Employment Relations Division that attorneys are bound to follow. He said that by reading the agreement, the committee could see that many of the things they do for their clients, they cannot charge for. If the sponsor wants to make sure the injured worker is adequately compensated, make the insurance be fair. He said he would be out of a job, but until they do that, the injured worker needs an attorney. He said they have to be there, they have to be competent, they have to spend the time. (EXHIBIT 41)

Jim Hunt, attorney, Helena, representing himself, said he could have brought 50 claimants to testify at the hearing. He said they could have adequately explained why attorneys are needed in these cases. He said more and more people are coming because they are not receiving benefits they are entitled to receive. Many times the benefits are not calculated properly. In over half the cases, the rate is incorrectly calculated. It is very seldom when he can't increase benefits. The \$7,500 cap is very unfair, he said, because a claimants' attorney, unlike a defense attorney, uses a lot of time dealing with an adjustor. The adjustors are sophisticated, the claimants are not. It is unfair to match them under those circumstances and limit fees on one side and not the other.

Jan Van Riper, attorney, representing herself, said she represents injured workers and posed a couple a questions. Who's

stating the problem? What is the problem? She had not heard any news coverage or any claimants complaining about the current fee situation. The second question is: Why would this body want to limit this access to the judicial system in this situation? It's the arm of government that tells entities that "you gotta do what the legislature told you to do."

Questions From Committee Members and Responses:

SENATOR DOHERTY asked **Mr. Swanson** if he only expressed support for the fraud provisions of the bill. Did he support the section of the bill that limited claimants' attorneys as well?

Mr. Swanson said he was only here to give testimony on the Chapman portion of the bill. The Department of Labor regulates the fees and he is not giving testimony on that portion.

SENATOR DOHERTY asked his feeling if they were to insert a clause into the bill limiting defense attorneys to the same restrictions as would be for plaintiffs' attorneys.

Mr. Swanson said he did not think it would be appropriate based upon insurance company attorneys, because they are typically on hourly rates. On the other side there are usually retainers involved. It was apples and oranges.

SENATOR HALLIGAN asked **SENATOR HARP** if he did construction work, if he worked at all for utilities. He asked if they were limited in their charges to work for regulated utilities.

SENATOR HARP replied that when the utilities put a project up for bid, they usually have 3-5 contractors bid on the project. They don't always take the low bidder because they have an internal mechanism that kicks in, called an engineer's estimate. If the estimate is above 5 or 6 per cent of the bid, the proposal is thrown out. So there is some internal pressures besides the outside forces of competition to limit his ability to make a profit.

SENATOR HALLIGAN asked if his overall concern was not the quality of the work and the fact that they would take the bid giving the most quality work. Wouldn't that affect the bill here, either inaccessibility to a system or the lack of confidence in a system to represent injured workers.

SENATOR HARP said he makes a point, and it was not his intent to close access. He said 90 per cent of the people in the business were admirable, but the 10 per cent who continue to capitalize on injured workers and certain individuals running "factories" going through a lot of claimants, spend very little time, and don't do a good job in receiving benefits, are the ones he is trying to target. He hoped to reduce the percentage of the group taking advantage of injured workers.

SENATOR HALLIGAN asked Mr. Grosfield how the bill would affect Old Fund cases prior to 1987? Would it restrict attorney's fee is those cases as well?

Mr. Grosfield said that based on Supreme Court precedent, the laws and rules in existence at the time of the injury would govern. This particular legislation would probably not affect anything prior to January, 1995.

Closing by Sponsor:

SENATOR HARP closed on SB 233 without further comment.

DATE _____

2-10-95

[illegible]

SEN:1995
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February 10, 1995

Sen. Bruce Crippen, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59620

RE: Senate Bill 233

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to Senate Bill 233, which further regulates the attorney fees paid by claimants--but not insurance companies--in workers compensation.

Background.

1. The attorney fees which claimants can pay in workers compensation cases are *already* regulated--by administrative rules, and unlike the fees by insurance companies to defense attorneys.

2. Since 1987, the fees paid to claimant's attorneys have *come from claimants themselves, not from the pockets of employers, insurers, or Montana taxpayers.* (See, for example, the fiscal note for SB 233.) In contrast, every penny of the fees paid to defense attorneys comes from the pockets of employers (who pay premiums directly) or Montana taxpayers (who subsidize Montana's work-comp system). Regrettably, work-comp insurers are not even required to report the attorney fees which they pay to defense attorneys, and so no comparison between claimant and defense fees is possible.

3. Claimants pay their attorney fees only when they obtain a recovery. Most

claimant attorneys, however (again unlike defense attorneys) *collect nothing at all if the claimant loses.*

4. Attorney fees paid by claimants are *declining dramatically*--and MTLA expects updated attorney-fee figures from the Department of Labor next week to reflect still further declines:

- Total settlement amounts paid to claimants *declined more than 30 percent* in the five years between 1988 and 1993. As settlement amounts decline, so do attorney fees calculated as a percentage of those amounts.
- Total fees paid to claimant attorneys *declined more than 40 percent* in the five years between 1988 and 1993.
- The number of attorneys involved in workers compensation cases is declining--more than 10 percent in the most recent year for which the Department of Labor has released settlement data. Fewer and fewer attorneys are willing to take new workers compensation cases because of drastically reduced benefits and the increasingly complex and unstable legal environment in workers compensation.

5. The recent closed-claim study of Montana's workers compensation system by Tillinghast demonstrated that *insurance companies treat claimants without attorneys) much worse than claimants represented by attorneys.* According to that study:

- Injured workers who rely on the State Fund average \$27,670; injured workers who finally hire an attorney against the State Fund average \$66,765. (Ironically, whenever the State Fund also resorts to an attorney, the average medical and wage-loss payments climb even higher--above \$74,000.)
- The average Montana worker *already waits more than three months* after being injured before the insurance company even admits responsibility. Workers who must deal with the State Fund face an average wait of 106 days, compared to 70 days for workers dealing with private insurers and 41 days for workers dealing with self-insured employers.
- The average Montana worker *already waits nearly five months* after being injured before the insurance company makes its first payment for wage losses or medical treatment. Workers who must deal with the State Fund face average delays of 160 days before their first medical bills are paid, compared to 64 days for workers dealing with either private insurers or self-insured employers.
- On average, the State Fund accepts responsibility for barely 27 percent of its paid claims within 30 days of the injury. In comparison, other work-comp insurers accept responsibility for 60 to 70 percent of their paid claims within 30 days of the injury.
- On average, the State Fund pays injured workers only 25 percent of their wage-loss benefits within 30 days of the injury. In comparison, other work-comp insurers pay 50 percent of wage-loss benefits within 30 days of the injury.
- On average, the State Fund pays injured workers less than 2 percent of their medical benefits within 30 days of the injury. In comparison, other work-

comp insurers pay about 40 percent of medical benefits within 30 days of the injury.

- On average, *the State Fund takes a year longer than other insurers to close a work-comp claim*, whether that time is measured from the date of injury or the date the insurer accepts responsibility.

- Despite such delays, and despite enormous financial hardships which pressure many injured employees to settle for cents on the dollar, ***THE AVERAGE MONTANA WORKER ALREADY WAITS MORE THAN 15 MONTHS AFTER BEING INJURED BEFORE RESORTING TO AN ATTORNEY.***

- Fewer than 2 percent of all work-comp claims in the study involved contested hearings. Fewer than 2 percent of all work-comp claims in the study went before the Workers Compensation Court. Fewer than 1 percent of all work-comp claims in the study were appealed to the Montana Supreme Court.

- Insurance companies disputed work-comp impairment ratings at about the same rate as injured workers.

- Not a single injured worker dared to represent herself or himself in a contested hearing or before the Workers Compensation Court. *There's nothing at all "user-friendly" about Montana's cumbersome, unstable workers compensation system.*

Senate Bill 233. In addition to the reasons stated above, MTLA opposes numerous specific provisions of SB 233:

1. By limiting attorney fees payable by claimants but not those paid by insurers, *the bill severely tilts the playing field* in disputed workers compensation cases. Although the accompanying amendment leaves intact many objectionable regulations upon claimant attorney fees, MTLA proposes the amendment in order to moderate the unbalanced impacts of SB 233.

2. Section 1, subsection (2), at page 1, lines 19-23, limits both hourly fees and contingent fees which an injured worker can pay to an attorney. It does nothing to limit the hourly fees or even the total fees which an insurance company can pay for attorneys.

3. Section 1, subsection (3), at page 1, lines 24-26, by limiting a claimant's attorney fees to 15 percent of "any benefits obtained, through the attorney's efforts, up to the date on which the claim is accepted by the insurer," *terribly disadvantages claimants.*

Example: Insurer denies compensability. Injured worker retains an attorney on contingent-fee basis. Attorney researches and works the case for weeks, challenges the denial, and prepares for hearing. At the last moment, insurer admits compensability and agrees to pay full benefits--20 percent of which are already past due and 80 percent of which will become due in the future. Claimant's attorney can only collect fees on the 20 percent of benefits which are past due.

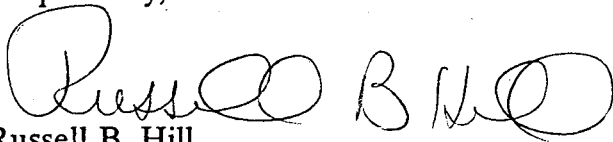
4. Section 1, subsection (4)(b), at page 2, lines 1-2, prohibits attorney fees for "benefits that are received by the claimant when the attorney has only assisted in filling out initial forms." *Ironically, in a workers compensation system which frequently treats claimants quite differently depending upon whether they have retained an attorney, this element of legal representation may be precisely the most important and effective contribution an attorney can make to an injured worker.*

5. Section 1, subsection (6), at page 2, lines 13-14, *prohibits a claimant attorney from collecting hourly fees in unsuccessful cases* and from collecting any fees whatsoever in advance of a final resolution.

6. Section 1, subsection (6), at page 2, lines 13-14, requires all claimant attorney fees to be paid out of benefits received by the claimant--even when the insurer has acted unreasonably and would otherwise be punished with a bill for those fees.

If MTLA can provide more information or assistance to the Committee, please notify me. Thank you again for this opportunity to express MTLA's opposition to Senate Bill 233.

Respectfully,

A handwritten signature in black ink, appearing to read "Russell B. Hill". The signature is fluid and cursive, with the first name "Russell" written in a larger, more prominent script than the last name "Hill".

Russell B. Hill
Executive Director

Amendments to Senate Bill 233
First Reading Bill (White Copy)

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Drafted by Russell B. Hill
February 10, 1995

1. Page 1, line 16.

Following: "claimant"

Insert: "or an employer"

2. Page 1, line 18.

Strike: "claimant"

Insert: "party."

3. Page 1, line 19.

Following: "(2)"

Insert: "Fees charged by an attorney representing a claimant are limited as provided by sections [3 through 6]. Fees charged by an attorney representing a party other than a claimant may not exceed \$75 an hour, subject to a maximum fee of \$7,500 per claim. The fee arrangement is subject to approval by the department."

Renumber: subsequent sections.

4. Page 2, line 13.

Following: "arrangement"

Strike: "and must be paid out of workers' compensation funds received by the claimant"

5. Page 2, line 22.

Strike: "the claimant gained due to the efforts of the attorney"

Insert: "paid"

Reason for the amendments: These amendments would limit fees payable by insurance companies. Although claimants would still be severely disadvantaged in their ability to obtain legal representation, the amendments at least apply some disadvantages to insurance companies as well.



**Great
Falls**

TRIBUNE

1993

Great Falls, Montana

No. 145 — 109th Year

50¢

Closeup on taxes

Premiums outpace payout for private insurers

Improvements tied to reforms in work comp

By MIKE DENNISON
Tribune Capitol Bureau

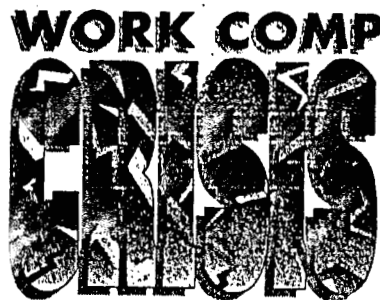
HELENA — In the midst of complaints about the high cost of workers compensation insurance in Montana, many private insurers are expanding work-comp sales here and watching loss ratios

decline.

For some private insurers, the growth has been dramatic: Lumbermens Mutual Casualty of Long Grove, Ill., increased its earned premiums in Montana from \$82,200 in 1988 to \$10.5 million last year; Liberty Northwest Insurance of Portland, Ore., went from \$385,000 to \$3.2 million.

Their losses also increased, but were far lower than premiums collected in 1992, state figures show.

Insurers and the state's chief work-comp executive say the increase shows that reforms made in 1987 and 1991 are paying off,



reducing the cost of the work-comp system.

"The carriers are being more aggressive; they're coming back into the state, which I'm glad to

see," said Patrick Sweeney, president of the State Compensation Mutual Insurance Fund. "You have a better system when you have a competitive system."

But the Montana Trial Lawyers Association and a labor spokesman say the figures aren't necessarily good news for everyone.

Don Judge, executive secretary for the Montana AFL-CIO, says private insurers are reaping returns from reforms that reduced or restricted benefits for injured workers.

"Workers have been hit the hardest by the changes and

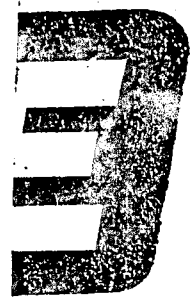
insurers have benefited the most," he said. "These highly profitable insurance companies reject the higher-risk employers, leaving them to be covered by the State Fund."

Russell Hill, executive director of the trial lawyers' group, says while private insurers — and their customers — are benefitting from reforms, the public has paid ever-higher costs to bail out the financially troubled State Fund.

"You've got to come grips that ... some of these companies are growing like crazy, and some money's being made here," he said.

See WORK COMP, 6A

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P, 6A

Work comp Changes good?

FROM 1A
"Private insurance companies ... skim the cream off the top of Montana's workers compensation system."

Hill said the State Fund is forced to insure the worst risks in the state. As its financial condition deteriorated in the 1980s, the clamor for reform grew.

Reforms may have helped shore up the State Fund, but they also help private insurers, who don't share the same risks as the State Fund, he said.

The State Fund insures about three-fourths of Montana businesses for work comp, which pays benefits to workers injured on the job.

The rest of Montana businesses either buy work-comp insurance from private companies or are self-insured.

According to figures from the state insurance commissioner's office, premiums earned by private work-comp insurers in Montana increased from \$49.8 million in 1988 to \$56.5 million last year.

At the same time, losses incurred by private insurers declined from \$35.8 million to \$30.1 million.

Insurance experts say these figures aren't necessarily an accurate measurement of premiums-to-losses ratios, for they rely on calendar years instead of comparing losses to the year for which the policy was written.

But the figures are a fairly good indicator of the overall trend of work-comp insurance in the state, these same experts say. Loss-ratios in Montana have generally declined since about 1988.

Steve Beckham, director of gov-

Comparing premiums to payout

A look at five private work-comp insurers in Montana.

1992		
COMPANY	Direct premiums earned	Direct losses incurred
Lumbermens Mutual Casualty Insurance Co. of North America	\$10,500,000	\$2,400,000
Liberty Northwest Insurance	\$4,000,000	\$1,600,000
Employers Insurance of Wausau	\$3,200,000	\$1,500,000
Standard Fire Insurance	\$3,400,000	\$1,400,000
	\$2,900,000	\$1,400,000
TOTAL (for all privates)	\$56,500,000	\$20,500,000

1988		
COMPANY	Direct premiums earned	Direct losses incurred
Lumbermens Mutual Casualty Insurance Co. of North America	\$80,000	\$10,000
Liberty Northwest Insurance	\$540,000	\$660,000
Employers Insurance of Wausau	\$380,000	\$190,000
Standard Fire Insurance	\$1,520,000	\$1,240,000
	\$1,010,000	\$1,920,000
TOTAL (for all privates)	\$49,820,000	\$24,750,000

"Direct premiums earned" are roughly equivalent to the net premiums collected by the company for a given year. "Direct losses incurred" are the anticipated and paid losses on claims submitted for a given year. These figures are for calendar years.

Insurance experts say figures based on "policy years" are more accurate, but that a calendar-year analysis over several years is usually an accurate portrayal of trends.

Source: Montana Trial Lawyers Association, State Insurance Commissioner

Tribune graphic

ernment affairs for Liberty Northwest Insurance, said his company has increased business in Montana because it sees a good market here.

"We're there for the long haul," he said. "We've established a nice, solid base in the Northwest."

His company has been successful because it works with employers and workers to control losses, through safety programs and good customer relations, he said.

Lumbermens Mutual, part of

Kemper National Insurance Companies, has increased its Montana work-comp premiums through national accounts that happen to do business in Montana, said Mark O'Brien, a special risks officer for Kemper.

"It's the policyholders who are benefitting from the reforms," he said of the changes in Montana work-comp law. "When loss experience shows a downward trend, I think everybody's a winner."

A prime!

Tribune Capitol Bureau

HELENA — Whoever coined the phrase "Figures lie and liars figure" must have had insurance companies in mind, for the labyrinth of insurance data often seems an impossible path to follow.

Of course, it's not impossible. One needs only to understand a few fundamental terms.

The language of insurance profit-and-loss involves three basic components: premiums, losses and reserves.

Insurers take in money by premiums charged to customers; they incur losses when they must pay claims. Insurers also earn income on their "reserves" — the unspent premiums that accumulate interest and other dividends when they're not being paid out in losses.

An insurer's "loss ratio" is figured by dividing premiums into losses. The lower the loss ratio, the better off the company. For example, if a company's loss ratio is 50 percent, it's paying out 50 cents in losses for every \$1 in premiums collected.

Loss ratios can be figured for calendar years, but insurance experts prefer "policy years." The latter method compares losses against a policy for the year it provided coverage, rather than taking all losses in a given calendar year.

Figures on private work-comp carriers in Montana show an increase in premiums from 1988-1992 and a decrease in losses.

Insurance experts say that's a favorable trend for insurers, but it may not present an accurate picture of the future. If companies are writing more insurance now, losses won't show up until later, they say.

Of course, those losses also could be lower than anticipated, creating an even better loss ratio.



Montana State AFL-CIO

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 40
DATE 2-10-95 Donald R. Judge
Executive Secretary
SB 233
406-442-1708

Testimony of Helen Christensen
before the Senate Committee on the Judiciary
February 10, 1995

Mr. Chairman, members of the Committee, for the record, I am Helen Christensen of the Montana State AFL-CIO. I am here today to urge your opposition to Senate Bill 233.

This bill suggests the use of a nuclear weapon to resolve a playground dispute, a solution far out of proportion to the size of the problem.

It appears that SB233 was crafted to remedy a single solitary situation involving a single work comp claimant who defrauded the State Fund, and lied to his attorney as well. After the State Fund had investigated, gone to court and lost the claim, they belatedly discovered the fraud. Then they went back to court to recover costs, not only from the fraudulent client, but from the clients' attorney who had no knowledge of the fraud and was only paid for the work he had done. The Supreme Court upheld the attorney's right to payment for his work.

Now we have a bill that would punish every attorney and every work comp claimant who disputes the finding of the State Fund because of that one case?

As with any insurer-client-claimant relationship, disputes will arise over work comp claims to the State Fund and litigation will become necessary. In no other similar relationship, however, does the law allow the insurance company unlimited access to legal representation and funding for those attorneys, yet requires the claimant -- before retaining counsel -- to not only choose from among the small number of attorneys willing to accept a limited fee but also prove that he or she is innocent.

Access to quality representation for an injured worker is already hampered by a law that unfairly discriminates in favor of a multi-million dollar insurance company. The bill before you further restricts access for the average Montanan by, in effect, telling every attorney in Montana that they must investigate any work comp client before accepting his or her case.

Where is the presumption of innocence? SB233 presumes the innocence of the insurance company while the injured worker is presumed guilty of fraud.

Where is the right to legal representation? SB233 gives the right to unlimited legal representation to the insurance company but restricts the right of the injured worker to counsel.

Why is this bill before you? One might see it as an attempt to "shift the blame." The State Fund and the Department of Justice have the responsibility and the resources to fully investigate claims and claimants and to identify those which are fraudulent. It is appropriate that the responsibility remain where it is and not be unfairly shifted to the private sector as another unfunded mandate.

Please vote no on Senate Bill 233. Thank you.

DATE 2-16-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 241, 249, 233

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Check One

Name	Representing	Bill No.	Support	Oppose
A. H. (Rud) Elwell	WCSM / NWAC	SB 241	X	
Broo Martin	MT Democratic Party	SB 249		X
GARY MARBUT	MISSA GOA CCRKBA WIMFGA BSPK	SB 241	X	
Bob Davies	self	SB 241	X	
Bob Gilbert	MT ASSOCIATION OF CLERKS OF DIST. COURT	SB 249		X
Norm Grosfield	Self	SB 233		X
Russell B Hill	MT Trial Lawyers	SB 233		X
Carl Swanson	State Fund	233	V	
Ben Everett	Attorney	233		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
EMPLOYMENT RELATIONS DIVISION
P.O. BOX 8011
HELENA, MT 59604-8011

ATTORNEY RETAINER AGREEMENT

DATE MAIL ROOM DATE 41
DATE 2-70-95
MAIL NO. SB 233

INSTRUCTIONS: Complete the form and return all copies to Department for approval. Claim No. _____

Attorney: _____ Claimant: _____

Address: _____
Address: _____ City/State/Zip: _____
City/State/Zip: _____ Date of Accident: _____
Phone: _____ Employer: _____

The above-named claimant hereby employs the above-named attorney and the attorney agrees to represent claimant in his claim for workers' compensation or occupational disease benefits arising out of an industrial accident or occupational disease suffered by the claimant on or about the above-noted day while employed by the above-noted employer, and claimant hereby requests that the Department of Labor and Industry enter the attorney as attorney of record, direct all future correspondence to said attorney and furnish said attorney all pertinent documents in claimant's file upon request.

Check A,B or C as applicable:

- ☐ A. Claimant and attorney agree to a fee schedule as follows:
For cases that have been settled without an order of the workers' compensation judge or the Supreme Court, twenty percent (20%) of the amount of additional compensation payments the claimant receives due to the efforts of the attorney.

For cases that go to a hearing before the workers' compensation judge or the Supreme Court, twenty-five percent (25%) of the amount of additional compensation payments the claimant receives from an order of the workers' compensation judge or the Supreme Court due to the efforts of the attorney.
- ☐ B. Claimant and attorney agree that claimant shall pay for services rendered by attorney on behalf of claimant at the rate of \$_____ per hour (not more than \$75.00 per hour); provided that the total fee shall not exceed the percentages set forth above in subsection "A."
- ☐ C. Application is made for approval of a variance from the guideline fees to charge at the rate of _____. Documentation for the requested variance is attached. If the variance is not approved, the attorney and the claimant agree to a fee of ____A or ____B, as set forth above.

Where the initial compensability of the claim is not in dispute, no fee shall be charged upon temporary total disability benefits paid during the healing period or upon medical benefits. If the insurer has denied liability, the attorney fee shall apply to all monies, including medical benefits, obtained for the claimant through the efforts of the attorney.

The following benefits shall not be considered as a basis for calculation of attorney fees:

- (1) The amount of medical and hospital benefits received by the claimant, unless the workers' compensation insurer has denied all liability, including medical and hospital benefits, or unless the insurer has denied the payment of certain medical and hospital costs and the attorney has been successful in obtaining such benefits for the claimant.
- (2) Benefits received by the claimant with the assistance of the attorney in filling out initial claim forms only.
- (3) Any undisputed portion of impairment benefits received by the claimant based on an impairment rating.
- (4) Benefits initiated or offered by the insurer when such initiation or offer is supported by documentation in the claimant's file and has not been the subject of a dispute with the claimant.
- (5) Any other benefits not obtained due to the actual, reasonable and necessary efforts of the attorney.

The claimant agrees to pay or reimburse all costs incurred by the attorney in investigating and prosecuting the claim.

Claimant does hereby authorize the attorney to act on his behalf exercising all powers authorized by the laws of the State of Montana relating to the attorney-client relationship. It is understood by the claimant that the attorney may select co-counsel as the attorney believes necessary and expeditious in handling the claim, and that any payment received by co-counsel shall be made by sharing the above-referenced fee between the attorney and the co-counsel.

In the event a dispute arises between any claimant and the claimant's attorney relative to attorney's fees in a workers' compensation claim, upon request of either the claimant or the attorney, or upon notice of any party of a violation of Section 39-71-613, MCA or ARM 24.29.3802, the Administrator or his designee, shall review the matter and issue his order resolving the dispute pursuant to procedures set forth in ARM 24.29.201, et seq.

The attorney and claimant understand that the Department retains its authority to regulate the attorney fee amount in any workers' compensation case even though the contract of employment fully complies with Section 39-71-613, MCA, and ARM 24.29.3802

DATED: _____ Claimant acknowledges a copy of this agreement and agrees that a copy be filed with the Department of Labor and Industry.
LAW FIRM: _____ CLIENT: _____
By: _____ SOCIAL SECURITY NUMBER: _____

LOWER PORTION TO BE COMPLETED BY DEPARTMENT ONLY

This agreement is hereby: ☐ APPROVED ☐ A ☐ B ☐ C ☐ NOT APPROVED

INITIALS _____ DATE _____

DATE 2-10-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 241-249-233

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Nancy Sweeney	Montana Association of Clerks of District Court	SB 249		✓
Gary Todd	self	233		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE

2-10-95

SENATE COMMITTEE ON

Judiciary

BILLS BEING HEARD TODAY:

SB 241-249-233

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Tamie S. Van Riper	self	233		✓
Mary A. Arnold	self	292		✓
Joe Spitzer	Self	233		X
Jim Hunt	SELF	233		X
Thomas Sullivan	SELF	233		✓
Oliver	MMIA MSGIA	233	✓	
Jim Stearns	Self	233		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-10-95SENATE COMMITTEE ON JudiciaryBILLS BEING HEARD TODAY: SB 292-241-249-233

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Check One

Name	Representing	Bill No.	Support	Oppose
Eling Frayer	MT NARAL	SB292		X
Jane Cross	CRLP	SB292		X
Helen Christensen	MT State AFL-CIO	SB233		X
Mark Mozer	Self	SB292	X	
Tim Whalen	Montana Right to Life	SB292	X	
Deborah Frandsen	Planned Parenthood	SB292		X
Ann Marie Phillips	Self	292		X
Connie Meyer	Self	292		X
Ed Tinsley	Lewis & Clark Cty Demos	292		X
Kay Fox	Self	292	X	
Sandra Briggs	Self	292		X
Hebbie Lee	Self	292		X
Matthew Hurdle	women	292		X
Blonde Stray	Self	292		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **BRUCE D. CRIPPEN, CHAIRMAN**, on February 13, 1995, at 10:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 318, SB 353, SJR 12
Executive Action: SB 189, SB 206, SB 266, SB 249, SB 276,
SB 241, SB 233, SB 353, SJR 12

EXECUTIVE ACTION ON SB 189

Motion: SENATOR MIKE HALLIGAN MOVED AMENDMENTS sb018906.av1 AS CONTAINED IN (EXHIBIT 1).

Discussion: Brenda Nordlund, Department of Justice, explained the amendments, saying that they softened the language in the original bill to delete express reference to substantially similar requirements for the implied consent laws in the tribal codes. This would also explicitly remove a reference to state tribal cooperative agreements. The Department intends to have

SENATOR GROSFIELD said he talked to **Gary Marbut**, who said federal monies were available to implement the Brady bill, but he did not know how much would be available, or when. He was concerned about the hit on the general fund and suggested fees.

CHAIRMAN CRIPPEN said he was troubled about a stipulation to register his name to buy a gun. He said the strip may be used for something else and it would be questionable.

SENATOR BAER said he was equally troubled. He said under the current law, you have to show identification when you buy a handgun. He said he could support the bill because he was opposed to the five-day waiting period.

Motion: **SENATOR ESTRADA** MOVED TO TABLE SB 241.

Discussion: **SENATOR GROSFIELD** understood that the new fiscal note could not be requested until a bill was amended, so this bill would qualify for reconsideration.

{Tape: 1; Side: B; Approx. Counter: 00}

Motion/Vote: **SENATOR BARTLETT** MOVED THAT SB 241 DO NOT PASS ON A SUBSTITUTE MOTION. The MOTION FAILED on a roll call vote.

Discussion: **SENATOR HALLIGAN** said he believed that the magnetic strip, as it tied to Social Security and birthdays, should be applied to everyone and not just convicted people.

Vote: The MOTION CARRIED UNANIMOUSLY on an oral vote to TABLE SB 241.

EXECUTIVE ACTION ON SB 233

Motion: **SENATOR HALLIGAN** MOVED TO STRIKE THE ATTORNEY LIMITATIONS ON THE BILL BUT KEEP EVERYTHING ELSE IN TERMS OF THE FRAUD PORTIONS.

Discussion: **SENATOR HALLIGAN** said he offered the amendments because most lawyers have relatively few Workers' Comp. cases except in the grievous cases where workers are being hurt. The retainer agreement limited them to 20% of the claim now and he felt it was impossible for lawyers to abuse the system. The only cases that would apply are the old fund cases, which the bill would not touch.

CHAIRMAN CRIPPEN asked if anyone had any thoughts on amending the portion of the bill dealing with the \$7,500 per claim?

SENATOR HALLIGAN stated that most of the cases and settlements were so small on the new fund cases that it would not affect 95 per cent of the cases.

SENATOR ESTRADA asked if it would not just be good public relations for the committee to pass the bill?

SENATOR HALLIGAN explained that he was involved in the cases he worked on only because the people were being treated so badly. He said he had \$8,300 worth of time and got a fee of \$5,000.

SENATOR ESTRADA said his work was commendable, but she knew of some very wealthy Workers' Comp. attorneys. She would recommend a Do Pass.

SENATOR DOHERTY viewed the problem as one of access. He said the Veterans Administration had tightened the claims for attorneys so dramatically that no one would take them. He said there were no claimants claiming an objection to their attorney receiving something for representing them. He agreed that someone may be running the cases through like a mill, but the claimants always had the option of filing a claim against overcharges. He stated that the one Workers' Comp. case he represented had been pending for 3 1/2 years and he had not received a dime. He said there was no concurrent limitation on defense attorneys and he maintained that was where the cost was. He said it was mostly Helena firms and the Crowley firm of Billings who were on retainer in excess of \$100 an hour to contest the claims. He said by limiting one side and not the other, they were ensuring that the injured workers would surely take the first offer because of unpaid bills.

SENATOR HOLDEN asked if they should then pass this bill and then draft a bill to cut down the defense attorneys. He asked **SENATOR DOHERTY** about a further bill.

SENATOR DOHERTY replied that the defendants are entitled to a good defense and they should hire the best attorneys they can get to provide a competent defense against claim. On the same side, the plaintiffs should be able to hire competent attorneys to press their cases. Both sides should be at the same level.

SENATOR HOLDEN said that while the attorneys from both sides are spending all the taxpayers' money, there was none left for the injured workers.

SENATOR DOHERTY said it was not the taxpayers' money, it was insurance. Also, he stated that the money paid the attorneys came out of the plaintiffs' award.

SENATOR BARTLETT said that **SENATOR ESTRADA** should check out the wealthy attorneys to identify the period of time in which they made their money. She felt it would be prior to 1987 when the changes limited fees. She thought it would be extremely difficult for anyone to get wealthy working on Workers' Comp. cases. She contended injured workers are finding it difficult to retain attorneys. She said a task force had been assembled to study Workers' Comp. costs. In that discussion, the plaintiffs'

attorneys had testified that there was almost a disruption to the process because the defense attorneys fees were so low and injured workers had difficulty getting representation when they needed it. People deserve good access to representation, she said.

SENATOR HOLDEN said he disagreed with SENATOR BARTLETT'S comments because in his insurance business, he had never seen anyone having any trouble finding an attorney. All through the session he had heard from the Trial Lawyers Association and others that cutting back fees will means no access to attorneys. But, he contended, he had files where people had sued over two tons of hay and other seemingly frivolous matters. He did not see the five per cent fee cut-back proposal as a detriment.

SENATOR GROSFIELD asked SENATOR HALLIGAN about removing the fees as proposed.

SENATOR HALLIGAN answered that it would begin with Subsection 2 on Page 1, striking the language all the way through to Line 19 on Page 2.

CHAIRMAN CRIPPEN asked if he would leave in the portion dealing with fraud?

SENATOR HALLIGAN answered yes to that issue as well as the title.

SENATOR JABS asked if they were to adopt the amendment, would it still give the injured worker the option to hire an attorney by the hour and could they negotiate a lower percentage if they wanted to?

SENATOR HALLIGAN replied affirmatively to both questions.

Vote: The MOTION CARRIED on an oral vote with SENATORS JABS, ESTRADA, HOLDEN AND BAER voting no.

Motion/Vote: SENATOR HALLIGAN MOVED THAT SB 233 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY on an oral vote.

{Tape: 1; Side: B; Approx. Counter: 30.2}

HEARING ON SB 318

SENATOR MIKE HALLIGAN ASSUMED THE CHAIR.

Opening Statement by Sponsor:

SENATOR BRUCE D. CRIPPEN, Senate District 10, Billings, submitted the bill at the request of the sponsor, SENATOR BENEDICT, who was not able to be there. He said the bill dealt with the statute of limitations for negligence or breach of contract actions brought against accountants. He understood that the present law limitations are five years. The bill would change the statute of

DATE _____

2-13-95

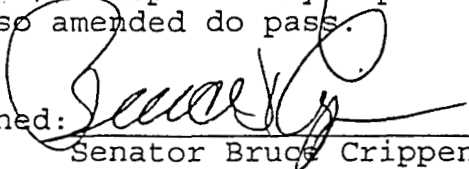
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 233 (first reading copy -- white), respectfully report that SB 233 be amended as follows and as so amended do pass.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, lines 4 and 5.

Following: "AN ACT" on line 4

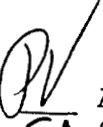
Strike: remainder of line 4 through "FEES;" on line 5

2. Page 1, line 19 through page 2, line 19.

Strike: subsections (2) through (7) in their entirety

Renumber: subsequent subsections

-END-

 Amd. Coord.

 Sec. of Senate

371636SC.SPV

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on March 8, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 335, SB 224, SB 329, SB 233, SB 374
Executive Action: SB 151, HB 554, SB 335, SB 233, SB 329

HEARING ON SB 335

Opening Statement by Sponsor:

SEN. KEN MILLER, SD 11, Yellowstone County, said this bill was an act revising the Montana Retail Installment Sales Act and

HEARING ON SB 233Opening Statement by Sponsor:

SEN. JOHN G. HARP, SD 42, Flathead County, said this bill was an act requiring the return of attorney fees and costs paid by an insurer to an attorney for a workers' compensation claimant convicted of obtaining benefits through fraud or deception and allowing benefits to be modified when they were obtained by fraud or deception.

Proponents' Testimony:

Carl Swanson, President, State Fund, said the State Fund had a claim against Mr. Chapman who incurred a permanent partial disability and the Workers' Compensation Court ordered benefits paid to Mr. Chapman as well as attorneys fees. After this occurred fraud was detected through investigation, the State Fund immediately proceeded to dis-report through a criminal conviction. It also went to the Workers' Compensation Court to have the original order vacated and the fees for the attorney as well as the benefits, pay restitution to the State Fund. The Workers' Compensation Court did order this and the decision was later overturned by the Supreme Court. In final analysis the attorney kept the \$17,000 in attorney costs and the Supreme Court indicated the Workers' Compensation Court did not have the authority to set aside this prior judgment which was an emergency ruling. This is the original judgment which is a short time in order to detect fraud if fraud is determined. Essentially, the decision reduced the Workers' Compensation Court ability to exercise effective decision-making powers and narrowly restricted this to a sixty-day period. It is because of this the State Fund supports passage of this bill.

Stan Kaleczyc, Montana Municipal Insurance Authority and Montana School's Group Insurance Authority, said this is an important bill because it clarifies the continuing jurisdiction of the Workers' Compensation Court in cases of fraud. Cases of fraud take a long time to develop and prosecute. Once fraud is determined, the two years which is provided in this bill is adequate.

Jerry Driscoll, Montana Building Construction Trades, said last session bills were supported to stop fraud. If the work is fraudulent everybody should pay.

Jacqueline Lenmark, American Insurance Association, said they supported the bill.

Chris Racicot, Executive Director, Montana Building Industry Association, said they supported this bill.

Harlee Thompson, Coalition For Workers' Compensation Improvement, said they supported the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 374

Opening Statement by Sponsor:

SEN. JOHN G. HARP, SD 42, Flathead County, said this bill was an act revising certain State Fund insurance laws; authorizing the State Fund to refuse workers' Compensation coverage to an employer or an employer's principals who have defaulted on a State Fund obligation; authorizing the State Fund to provide employers' liability insurance as part of the required coverage; authorizing the State Fund to contract with public entities to sell services at not less than cost; the State Fund to belong to a licensed rating organization; prohibiting the sale or distribution of information provided to a workers' compensation rating organization and reducing to 20 days the time required for notifying an employer of the cancellation of coverage. He also offered amendments. EXHIBIT 4

TAPE 2, SIDE A

Proponents' Testimony:

Rick Hill, Board of Directors, State Fund, said the State Fund is required to insure an employer in Montana, and may also cancel coverage for failure to pay premiums. EXHIBIT 5

Stan Kaleczyc, National Council On Compensation Insurance, said they did not take any position with respect to the first half of the bill which deals with internal operating issues relating to the State Fund. The Advisory Council and the modification factor are supported with the technical amendment. With that amendment those portions of the bill will be coordinated.

Harlee Thompson, Manager, Intermountain Truss, supplied written testimony. EXHIBIT 6

Jerry Driscoll, Montana State Building Construction Trades, stated the history of this legislation. The minimum policy charge is a charge for the paperwork. Those people who are paying more than \$5,000 to \$6,000 are subsidizing the smaller employers.

Motion/Vote: REP. COCCHIARELLA MOVED THE COCCHIARELLA AMENDMENT. Motion to adopt the Cocchiarella amendment failed 7-11 with REPS. PAVLOVICH, COCCHIARELLA, FORBES, KEENAN, LARSON, SLITER and TUSS voting yes.

Motion/Vote: REP. PAVLOVICH MOVED THE #2 PAVLOVICH AMENDMENT. Motion to adopt the #2 Pavlovich amendment passed 12-6 with REPS. ELLIS, OHS, BARNETT, ELLINGSON, SIMON and MARSHALL voting no.

Motion/Vote: REP. KEENAN MOVED HB 554 BE TABLED. A roll call vote was taken which failed 8-10 with REPS. MILLS, PAVLOVICH, COCCHIARELLA, FORBES, HERRON, KEENAN, LARSON and TUSS voting yes.

Vote: A roll call vote was taken TO BE CONCURRED IN AS AMENDED which carried 10-8 with REPS. MILLS, PAVLOVICH, FORBES, HERRON, KEENAN, LARSON, SLITER and TUSS voting no.

EXECUTIVE ACTION ON SB 335

Motion/Vote: REP. FORBES MOVED SB 335 BE CONCURRED IN. Motion carried 13-5 with REPS. TUSS, ELLINGSON, PAVLOVICH, LARSON and KEENAN voting no.

EXECUTIVE ACTION ON SB 233

Motion/Vote: REP. ELLIS MOVED SB 233 BE CONCURRED IN. Motion carried 18-0.

EXECUTIVE ACTION ON SB 329

Motion/Vote: REP. MCKEE MOVED SB 329 BE CONCURRED IN. Motion carried 18-0.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-8-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

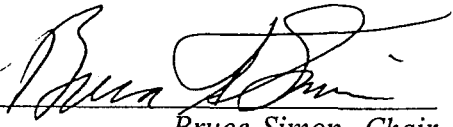


HOUSE STANDING COMMITTEE REPORT

March 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 233** (third reading copy -- blue) be concurred in.

Signed: 
Bruce Simon, Chair

Carried by: Rep. Mercer

Committee Vote:
Yes 18, No 0.

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

DATE 3-8-95

BILL NO. SB 233 SPONSOR(S) _____

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Russell B Hill	MT Trial Lawyers		✓
Carl Swanson	State Funds		
Tim Evans Missoula	1		
Jaqueline Benmark	Am. Ins. Ass'n	✓	
Riley Johnson	NFIB	✓	
Jerry O'Neill	mt. State Building trades	✓	
HARLEE Thompson Helena	CWCS I	✓	
Don Allen	CWCS I	✓	
STAN KALCZYK	MT MUNICIPAL INSURANCE MT SCHOOL GROUP INSURANCE	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.